IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.9216 OF 2005

Khilonmal Jumdomal Basantani & another).. Petitioners

Versus

State of Maharashtra and others).. Respondents

Mr.A.Y. Sakhare, Senior Advocate, with Mr.R.K. Mendadkar i/b.M/s.Ranjit & Co. for the Petitioners.

Mr.S.R. Nargolkar, Assistant Government Pleader, for Respondent Nos.1 to 3.

CORAM: V.G. PALSHIKAR, Ag. C.J. AND SMT. NISHITA MHATRE, J.

DATED: 23RD JANUARY 2006

P.C.:

. By this Petition, the Petitioners have challenged the order passed by the Caste Scrutiny Committee holding that Respondent Nos.4 and 5 have been wrongly held to be persons belonging to a Scheduled Tribe.

2. Facts necessary for adjudication of this Petition stated briefly are that the Petitioners purchased from Respondent Nos.4 and 5 certain lands, which purchase was held invalid by application of the provisions of Section 36 of the Maharashtra Land Revenue Code. When the matter reached this Court, Writ Petition

No.3887 of 1998 of the present Petitioner No.1 was decided by an order dated 6th March 1999 which was passed by consent of all the parties thereto. By that Consent Order, it was stipulated that the caste of Respondent Nos.4 and 5 be scrutinised by the Committee appointed for that purpose. Among other directions issued on consent, the following directions were issued :-

> "(d) Upon receipt of the list as aforesaid, the Collector shall, thereafter, serve notices to all the plot holders, including the Petitioner and Respondent Nos.1 and 2 by R.P.A.D. or by any other mode as permissible under law. The Collector shall, also cause to publish the notices in the two local newspapers.
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> (e) After due notice to all concerned parties, the Collector shall hold an enquiry in accordance with law under Sections 36 and 36A of the M.L.R.C. 1966, for restoration of possession of lands in question.
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> (f) The Collector shall refer the caste claim to the concerned Scrutiny Committee duly established by the State Government, and all parties shall be permitted to appear before the Scrutiny Committee, and after hearing all the parties, the Scrutiny Committee will submit its report to the Collector, as expeditiously as possible, and not later than four months from the date of the receipt of the reference.

3. Accordingly, the Caste Scrutiny Committee undertook the task of scrutinising the caste of Respondent Nos.4 and 5. Vigilance Committee report was called for. The procedure as prescribed for

implementing the directions of the Supreme Court of India in the case of *Kumari Madhuri Patil and another* vs. *Additional Commissioner, Tribal Development and others*, **(1994) 6 SCC 241**, have been followed. The report of the Vigilance Committee was sought and considered. Documentary evidence as tendered by the tribals was considered and on consideration of the entire evidence and appreciation thereof, the Committee came to the conclusion that Respondent Nos.4 and 5 do belong to Scheduled Tribe. It is this declaration and order of validation passed by the Caste Scrutiny Committee which is the subject matter of this Writ Petition.

4. The learned Counsel appearing on behalf of the Petitioners submitted that copy of the Vigilance Committee report is not given to the Petitioners and, therefore, directions as given by the Supreme Court of India in the case of *Madhuri Patil* (supra) are not followed. The relevant observations of the Supreme Court of India in the case of *Madhuri Patil* (supra) are contained in paragraph 6. It reads thus :

> "6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with

> acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/ parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof."
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> (Emphasis supplied)

5. The contention is that though as per the directions of the Supreme Court of India, a copy of the Vigilance Committee report is to be given to the candidate against whom the report is made, reliance is placed on the order of this Court passed on consent of parties giving them opportunity to appear before the Committee and raise their contentions. This, according to the learned Counsel, necessarily required giving a copy of the Vigilance Committee report to the Petitioners because, according to him, the Petitioners were the persons adversely affected by the Vigilance Committee report which proclaimed that the tribals

(Respondent Nos.4 and 5 herein) did belong to the tribe which they claimed. What has been directed by this Court, on agreement of parties, is giving of opportunity to the Petitioners to prove or disprove the caste of Respondent Nos.4 and 5. The Petitioners have been litigating on this issue for several years. There is nothing on record to show that demand for supply of the Vigilance Committee report was made and declined. In the absence of such demand before the Committee, it cannot be said that there is any violation of the principles of natural justice.

6. Relying on the judgment of the Supreme Court of India in the case of *State of Maharashtra* vs. *Milind and others*, reported in **(2001) 1 SCC 4**, by which it is mandated that the Caste/Tribe Scrutiny Committee cannot add or alter in any manner the entry as is made in the Presidential Order of 1950. The contention is, relying on this decision, that what has been held by the Committee is that Respondent Nos.4 and 5 belong to a Schedule Tribe of Kokana, when in fact documents show that they belong to Kokani-Hatgad. Vigilance Committee report in this case, therefore, required a scrutiny. The Caste Scrutiny Committee in its order impugned in this Petition, has observed that the matter was referred to the Vigilance Cell. The Vigilance Cell submitted its report on 17th September 1999. The report disclosed

that the Vigilance Officer visited home as well as schools of the children of the Respondents. The Officer observed what was the surrounding in which they were placed. The Vigilance Officer also noticed that in records of both these schools, the caste of the children of the Respondent is recorded as Hindu Kokani and, therefore, according to the learned Counsel, the Committee was wrong in finding Respondent Nos.4 and 5 to belong to the tribe Kokana. We are unable to accept this contention for the simple reason that Hindu is the religion of which Kokani is a tribe and, therefore, merely because some documents describe the candidates as belonging to Hindu Kokani, it cannot be said that there is an addition to the entry as found in the Constitution. The entry as amended by the State of Maharashtra mentions Kokana as the tribe. Then again, it is mentioned as Kokna, Kokni and Kukna and the certificate of validation granted by the Committee is that they belong to Kokana, Scheduled Tribe, which is mentioned in the Schedule. The order of the Scrutiny Committee is based on the appreciation of evidence. It cannot be said that there is no evidence on record to warrant such a conclusion. When there is evidence, which was considered to be adequate by the Scrutiny Committee, there is no scope of any right to interfere in such appreciation of evidence.

7. Objection is also taken to the document which describes Respondent Nos.4 and 5 as belonging to Kokani-Hatgad and, therefore, holding them to be Kokana, Scheduled Tribe, is deleting or altering the entry which is impermissible, according to the learned Counsel for the Petitioners, as per the judgment in the case of *Madhuri Patil* (supra). It is obvious from the record and the report of the Vigilance Committee, as narrated by the Scrutiny Committee, Respondent Nos.4 and 5 and their progeny were residing in Village Hatgad. The reference in that document to Hatgad can also be reference to the fact that they are belonging to Kokana community from Hatgad Village. There is, therefore, no substance in this Writ Petition. The same is dismissed.